



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Referred by
W-1337

Honorable Marvin Hall, Commissioner
Board of Insurance Commissioners
Austin, Texas

Dear Sir:

Attention: Mr. Girard Kinney

Opinion No. O-2453

Re: May a limited partnership en-
gage in the insurance business
as a recording agency?

Your recent request for an opinion of this Depart-
ment on the above stated question has been received.

Your letter reads in part as follows:

"Please refer to Article 6110, Vernon's Re-
vised Civil Statutes of 1925 on limited partner-
ships and also to Article 5062A, regarding licenses
for local recording agencies and advise this De-
partment if there is any law in view of the articles
above referred to which would prohibit the organi-
zation of a limited partnership for the purpose of
conducting an insurance business or organizing an
agency for the purpose of representing certain in-
surance companies (excepting life insurance compan-
ies).

"In view of the wording of Article 5062A, we
have declined to issue agency licenses to corpora-
tions; however, we are not clear on the question of
whether or not a limited partnership may engage in
the insurance as a recording agency."

Article 5062A, Vernon's Annotated Civil Statutes,
reads in part as follows:

"Section 1. Insurance agents, as that term is defined in the laws of the State, shall for the purpose of this Act be divided into two classes; Local Recording Agents and Solicitors.

"Section 2. By the term 'Local Recording Agent' is meant a person or firm engaged in soliciting and writing insurance, being authorized by an Insurance Company or Insurance Carrier, including Fidelity and Surety Companies, to solicit business and to write, sign, execute and deliver policies of insurance, and to bind companies on insurance risks, and who maintain an office and a record of such business and the transactions which are involved, who collect premiums on such business and otherwise perform the customary duties of a Local Recording Agent representing an Insurance Carrier in its relation with the public.

"By the term 'Solicitor' is meant a person officing with, and engaged in, soliciting insurance on behalf of a Local Recording Agent, who does not sign and execute policies of insurance, and who does not maintain company records of such transactions. This shall not be construed to make a Solicitor of a Local Recording Agent who places business of a class which the rules of the company or carrier require to be placed on application or to be written in a supervisory office.

"Section 3. When any person or firm shall desire to engage in business as a Local Recording Agent for an Insurance Company or Insurance Carrier, he shall make application for a license to the Board of Insurance Commissioners, in such form as the Board may require, and such license may be issued by said Board in the form prepared by it when he shall be found of good character and good reputation. The Board is authorized to issue licenses to firms or to individuals engaging as partners in the insurance business provided the names of all persons interested in such firm are named in the license, and provided, further, that all licensed agents must be residents of Texas. Provided, that a person who may reside in a town through which the State line may run and whose residence is in the town in the adjoining State may be licensed, if he has during the last preceding two years been licensed by the State, and

Honorable Marvin Hall, Page 3

if his business office has been and is being maintained in this State. The Board shall not issue a license to a corporation."

Article 6110, Vernon's Annotated Civil Statutes, reads as follows:

"Limited partnerships for the transaction of any mercantile, mechanical, manufacturing or other business, except banking or insurance, may be formed by two or more persons, upon the terms, with the rights and powers, and subject to the conditions and liabilities herein prescribed."

It will be noted that Section 3 of Article 5062A, supra, provides that "the Board is authorized to issue licenses to firms or to individuals engaged as partners in the insurance business, provided the names of all persons interested in such firm are named in the license. . ." We do not believe that this statute authorizes the Board to issue licenses to limited partnerships authorizing them to engage in the insurance business as recording agencies.

Article 6110, supra, provides that limited partnerships of two or more persons may be formed for any "mercantile, mechanical, manufacturing or other business, except banking or insurance . . ." It will be seen that limited partnerships cannot be formed for the purposes of banking or insurance business. The statutes relating to the formation and notice of limited partnerships are designed to afford a method of informing the public of the fact that such a partnership exists, and of the limitations of certain partners' liability; existence of a partnership is not dependent on a compliance with the law, but compliance is essential to the formation of a limited partnership; a partnership is general if statutory regulations have not been complied with. Substantial compliance or conformity to such a degree that no one will be misled satisfies the statute; mere formal defects will not make the partnership a general one. Tex. Jur. Vol. 32, p. 568, Allison v. Campbell, 298 S. W. 523; rehearing denied, 1 S. W. (2d) 866 subsequent appeal 35 S. W. (2d) 776, error dismissed; McCamey v. Hollister Oil Co., 241 S. W. 689, affirmed 274 S. W. 562; Gallagher & Co. v. Chas. Heidenheimer & Co. Civ. Cas. App. Sections 132 and 133; Thompson v. Schmitt, 274 S. W. 554; Carhart Bros. v. Killough, White & W., Civ. Cas. App. Sections 112 and 113.

Honorable Marvin Hall, Page 4

It is essential to a formation of a limited partnership that the statutes shall be substantially complied with by the making and signing of a certificate, stating certain particulars of the proposed business, capital, and names and residences of the partners, by an acknowledgment of the same before an officer, by filing of the acknowledged certificate in the county where the principal place of business of the partnership is to be situated or in other counties where it is to have places of business, to be recorded at large. Tex. Jur. Vol. 32, p. 589; Articles 6110, 6113, 6114, and 6115, Vernon's Annotated Civil Statutes.

In view of the foregoing authorities you are respectfully advised that it is the opinion of this Department that the Board of Insurance Commissioners has no legal authority to issue license to a limited partnership for the purpose of engaging in the insurance business as a recording agency. It is our further opinion that a limited partnership cannot be legally created for the purpose of engaging in the insurance business, therefore, your question is respectfully answered in the negative.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*
Ardell Williams
Assistant

AW:BBB

APPROVED JUN 24, 1940

Eusebio Mann
ATTORNEY GENERAL OF TEXAS

